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A.S.No.947 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.947 of 2014

1. M/s. Mahavir Castings Ltd.,
represented by its Authorized Signatory

2. Ronak Shah ... Appellants

Versus

M/s. Snam Alloys Pvt. Limited
rep. by its Authorized Signatory G.Santhanakrishnan ... Respondent

Prayer: Appeal Suit filed under Section 96 r/w Order 41 R 1 of the Code of Civil Procedure to set aside the impugned judgment and decree, dated 16.09.2013 in O.S.No.31 of 2006 on the file of the learned Principal District Judge, Puducherry and allow the First Appeal with cost.

For Appellants : Mr.L.Swaminathan

For Respondent : Mr.S.Arun Prasad

JUDGMENT

This Appeal Suit is filed by the unsuccessful defendants in O.S.No.195 of 2004, which is re-numbered as O.S.No.31 of 2006, in which, by a judgment and decree dated 16.09.2013, the plaintiff's suit for money claiming the defendants 1

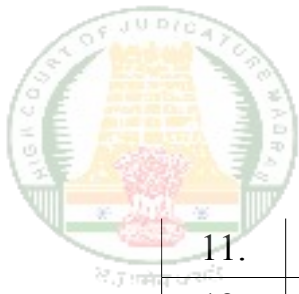


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and 2 to jointly and severally pay a sum of Rs.6,31,700/- was decreed with subsequent interest at the rate of 12% per annum from the date of plaint till the date of decree and thereafter, at 6% per annum till the date of realisation, with costs.

2. The plaintiff's case is that the plaintiff is having its Unit-I and Unit-II at Puducherry. At request of the defendants, the plaintiff supplied iron ore. The supply of goods was by placing of orders through invoices and the payments were to be made through Hundi. Goods were supplied vide 15 invoices for value totally amounting to Rs.6,31,700/-, the details of which are as follows:-

Sl.No.	Invoice No.	Date of Invoice	Date of Payment Due	Amount Due	Interest @ 12% till 21.4.2004 in Rupees	Total Amount
1.	0090	26.04.2001	05.07.2001	31,900	10,697	42,597.00
2.	0261	27.05.2001	06.07.2001	38,663	12,953	51,616.00
3.	0466	21.08.2001	30.10.2001	31,900	10,100	42,000.00
4.	0647	21.08.2001	30.09.2001	19,331	05,929	25,260.00
5.	0648	21.08.2001	30.10.2001	38,077	11,680	49,757.00
6.	0568	24.09.2001	02.12.2001	31,900	09,470	41,370.00
7.	0813	24.09.2001	02.12.2001	38,077	10,929	49,006.00
8.	0778	01.12.2001	08.02.2002	31,900	08,348	40,248.00
9.	0779	01.12.2001	08.02.2002	31,900	08,348	40,248.00
10.	1149	01.12.2001	08.02.2002	38,077	09,945	48,022.00



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11.	0903	02.01.2002	13.03.2002	31,900	08,075	39,975.00
12.	0904	02.01.2002	03.03.2002	31,900	08,075	39,975.00
13.	1338	02.01.2002	13.03.2002	38,077	09,639	47,716.00
14.	1413	10.03.2002	27.05.2002	31,900	05,055	36,955.00
15.	1414	18.03.2002	27.05.2002	31,900	05,055	36,955.00
					Total	6,31,700.00

Since the defendants defaulted in payment, a legal notice, dated 24.02.2004 was issued. Since there was no positive response, the suit was filed on 21.04.2004.

3. The defendants resisted the suit by filing a written statement. It is their contention that the materials were supplied only at Ahmedabad and even the address of the transporter, namely Patel Roadways, can also be seen as their Branch Office at Ahmedabad and therefore, only the Courts at Ahmedabad alone have jurisdiction to trial the issue. The goods supplied under Invoice No.757, dated 17.10.2000 to the extent of 500 Kgs were defective and consumers for defendants had rejected the same and the defendants had incurred loss to the tune of Rs.6,46,992/-. This apart, it is the contention of the defendants that even though the suit was presented on 21.04.2004, the entire Court Fee was not paid on that day and only on 29.04.2004, after payment of deficit Court Fee, the suit was taken on file and therefore, atleast in respect of the first invoice, which is



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dated 26.04.2001, the suit is barred by limitation. By way of an additional written statement, additional pleadings were also taken by the defendants, in and by which, it is also contended that several of the invoices mention the name as "Snam Alloys Private Limited.Unit-II". When specific invoice has been given in the name of two entities, filing of the suit by the plaintiff, namely M/s.Snam Alloys Private Limited, alone in respect of all the invoices is bad in law and if there is one more entity being the sister concern of the plaintiff, the said entity also ought to have been made as a party to the suit and therefore, the suit is bad for non-joinder of parties.

4. On the strength of the said pleadings, initially, the Trial Court had framed only the following issues:-

1. Whether the plaintiff is entitled to the suit claim?

2. Whether the plaintiff has supplied defective raw material?

3. Whether the defendant has incurred loss of a tune of Rs.6,46,992/-?

4. To what relief the plaintiff is entitled to?

5. Thereafter, upon the steps taken by the defendants to try the issue of territorial jurisdiction and non-joinder of parties as preliminary issue, the Trial



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Court decided that instead of deciding the issues separately, all these issues can

be taken up together and framed the following additional issues on 16.06.2011:-

01. Whether "M/s.Snam Alloys Pvt. Ltd. and "Snam Alloys Pvt Ltd. Unit-II" are two separate legal entities as alleged by the defendant.

02. Whether only the court of Ahmedabad will have exclusive territorial jurisdiction over the suit?

03. Whether the defendants have unconditionally and without any resistance have agreed in writing to pay the dues under the invoices to plaintiff "Snam Alloys Pvt. Ltd".?

6. On the said issues, the parties let in evidence. The representatives of the plaintiff Company, namely one *G.Santhanakrishnan*, was examined as P.W.1 and *Exs.A-1* to *A-20* were marked. By way of cross-examination of P.W.1, the documents in *Exs.B-1* to *B-14* were marked. Apart from the same, no separate evidence was let in by the defendants. Under these circumstances, the Trial Court considered the matter after hearing the parties. By the judgment and decree dated 16.09.2013, the Trial Court took up for answering only the five issues mentioned in paragraph No.6 of the judgment. The Trial Court considered (i) Whether the plaintiff is entitled to the suit claim?; (ii) Whether the plaintiff has supplied defective raw material?; (iii) Whether the suit is barred by limitation?;



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(iv) Whether the defendant has incurred loss of a tune of Rs.6,46,992/- and (v)

WEB TO what relief the plaintiff is entitled to? On merits, the Trial Court found the issues in favour of the plaintiff and against the defendants and therefore decreed the suit by ordering reduced interest at the rate of 12% per annum from the date of the plaint and till the date of decree and thereafter, at 6% per annum till the date of realisation. Aggrieved by the same, the present Appeal Suit is laid before this Court.

7. Heard *Mr.L.Swaminathan*, learned Counsel appearing for the appellants and *Mr.S.Arun Prasad*, learned Counsel appearing for the respondent.

8. *Mr.L.Swaminathan*, learned Counsel appearing for the appellants, taking this Court in detail through the pleadings and the proceedings before the Trial Court, demonstrated that the defendants have categorically taken the plea of objection as to territorial jurisdiction, limitation and the non-joinder of necessary parties. Even though the additional issues were framed regarding the non-joinder of necessary parties and territorial jurisdiction, the Trial Court did not answer the issue regarding the territorial jurisdiction at all in the judgment. He would submit that even though the plea regarding the limitation is mentioned in the issue, the



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same is not at all considered by the Trial Court in the judgment and is left unanswered. Therefore, he would submit that the judgment and the decree of the Trial Court is blatantly erroneous without considering the valid legal defences available to the defendants. He would submit that only on the strength of these defences, the defendants did not even adduce evidence on merits as the issue would have again to be gone into by appropriate Court at Ahmedabad. Therefore, they are seriously prejudiced on account of the non-consideration of this defence. In any event, the matter has to be remanded back to the Trial Court for consideration of all the issues.

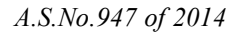
9. The learned Counsel also submitted merits of these issues. It can be seen from the invoices that the goods were supplied to the plaintiff at its branch at Ahmedabad. Even the carrier's address is shown only as Ahmedabad. Even all the banks through which payments were processed and received were located only at Ahmedabad. Therefore, only the Courts at Ahmedabad have territorial jurisdiction. The learned Counsel would submit that the date of the first of the invoices is 26.04.2001 and therefore, the period of limitation expires on 25.04.2004. The plaint, after payment of Court Fee, was represented and taken on file only on 29.04.2004 and therefore, atleast, in respect of the first invoice,



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the suit is barred by limitation. As far as the third issue is concerned, it can be seen from the paragraph No.6 itself, the non-joinder of that party is not taken up as an issue. Therefore, when the Trial Court did not specifically take up the issue. The defendant could not let in evidence properly or argue the matter before the Trial Court properly. Therefore, the Trial Court erred in deciding the issues without posing the issue and without properly giving an opportunity to the defendants to let in evidence on said issue. Therefore, the learned Counsel would submit that the judgment and decree of the Trial Court is erroneous in law and prays for allowing of the Appeal Suit.

10. Per contra, *Mr.S.Arun Prasad*, learned Counsel appearing for the respondent, would submit that the plaintiff, after filing the suit on 21.04.2004, is still awaiting the judgment and decree in the Appeal Suit. The goods were supplied as early as in the year 2001 and this a simple case after accepting the goods and agreeing to pay by Hundi, the defendants did not pay. Therefore, it is simplicitor a suit for recovery of money for non-payment for the goods received. The only defence which was taken by the defendants is that in respect of one consignment, 500 kgs were defective. No evidence whatsoever was let in in respect thereof and therefore, the Trial Court has considered the said issue and in



The learned Counsel would submit that there is absolutely no case for the defendants on merits. The learned Counsel would further submit that even though the contention regarding the territorial jurisdiction is raised by the defendants, it can be seen that in many of the invoices, the stamping of the carrier, namely Patel Roadways, from their branch at Kirumampakkam, Puducherry is specifically mentioned and therefore, the plaintiff has categorically proved that the plaintiff supplied the goods only from Puducherry. Therefore, when part cause of action arises in Puducherry, the suit is in order. The learned Counsel would further submit that as regards the plea of non-joinder of necessary parties, the plaintiff has categorically let in evidence that M/s.Snam Alloys Pvt. Ltd. Unit-II is only the other unit and therefore, the invoice contained the unit particulars also. The same is not a separate legal entity. The Trial Court has expressly considered the issue and rejected the contention in the judgment, even though the issue is not expressly mentioned in paragraph No.6.

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respect of even the first invoice arises on 05.07.2001 which is the last date of payment due on Hundi and therefore, in any event, the suit is within three years from the said date. Therefore, the learned Counsel would pray that the Appeal Suit without any merits be dismissed.

12. I have considered the rival submissions made on behalf of either side and perused the material records of the case. Even though the learned Counsel for the defendants is correct in contending that the Trial Court did not properly mention and address all the issues framed, I am of the view his prayer to remand the matter back is unsustainable. A cumulative reading of Order XLI Rules 23, 23-A, 24 and 25, it would be clear that the Appellate Court has every right to frame any issue and determine any question that may be left out by the Trial Court. For that purpose, it is not mandatory to remand the matter to the Trial Court. Reference in this regard can be usefully made to the judgment of the Hon'ble Supreme Court of India in *Smt. Bachahan Devi & Anr. Vs. Nagar Nigam, Gorakpur & Anr.*¹, more specifically to paragraph 24. In this case, firstly all the relevant issues were framed. Only there was failure on the part of the Trial Court to extract all the issues and answer them in the judgment. The parties have let in all evidence necessary for a decision on these issues and

¹ (2008) 12 SCC 372



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therefore, in this case, the issues can be determined by this Court itself.

Secondly, remanding the matter back in the year 2022, after the goods having been supplied in the year 2001, after the suit being pending from the year 2004, would amount to travesty of justice. Therefore, I am of the view that all the issues can be considered by this Court in this Appeal Suit itself.

13. With regard to the issue of the territorial jurisdiction, a perusal of the averment in the plaint and the written statement and the evidence on record, it would be clear that the units of the plaintiff is within Puducherry. The goods are supplied from the said unit. Thus, the primary part of the cause of action, namely supply of goods, arises within Puducherry. Therefore, the Courts at Puducherry are entitled to entertain the suit. There is no restrictive clause or covenant in the invoice that the subject matter is liable of jurisdiction of the Court at Ahmedabad alone and therefore objection as to Territorial Jurisdiction stands rejected.

14. As far as the second contention regarding the non-joinder of necessary party is concerned, it is clear that the plaintiff is a Company, namely Snam Alloys Private Limited, incorporated under the Companies Act. The plaintiff could have several units and it is for their administrative convenience that the



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Unit-I or Unit-II is mentioned in the invoices. When the legal entity is one and the same, the separate units need not be added as party and therefore, the objection of the defendants, in this regard is frivolous and unsustainable.

15. As far as the period of limitation is concerned, as rightly pointed out by the learned Counsel for the respondent/plaintiff, the first invoice is dated 26.04.2001 and the last date due for payment through Hundi expires on 05.07.2001. The suit is filed very much within three years from the said date and the suit itself is taken on file on 29.09.2004, and hence is within the period of limitation.

16. As far as the merits of the plaintiff's claim is concerned, the contention of the defendant is about defective supply of about 500 mts of material. Even though such a plea is belatedly raised, the defendants did not let in any evidence regarding the same. Therefore, this is a case where the defendants have absolutely no defense on merits but are harping only on the technical objections which are rejected supra. Hence the plaintiff's suit is liable to be decreed.

17. In the result :



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(i) This Appeal Suit in A.S.No.947 of 2014 stands dismissed;

(ii) The respondent/plaintiff is entitled for costs through out;

(iii) It is also seen that pursuant to the interim orders of this Court, a sum of Rs.1,00,000/- is already deposited to the file of the Trial Court. The respondent/plaintiff will be entitled for payment out of the said amount along with the accrued interest. The Trial Court shall pay a sum to the respondent/plaintiff without insisting any formal application, upon memo being filed by the respondent/plaintiff along with a copy of this order and particulars of the bank.

20.10.2022

Index : yes
Speaking order
grs

To

The Principal District Judge,
Puducherry.



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D.BHARATHA CHAKRAVARTHY. J.,

grs

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